

IC 36-1-3

Chapter 3. Home Rule

IC 36-1-3-1

Application of chapter

Sec. 1. This chapter applies to all units.

As added by Acts 1980, P.L.211, SEC.1. Amended by P.L.251-1993, SEC.1.

IC 36-1-3-2

Policy

Sec. 2. The policy of the state is to grant units all the powers that they need for the effective operation of government as to local affairs.

As added by Acts 1980, P.L.211, SEC.1.

IC 36-1-3-3

Rule of law; resolution of doubt as to existence of power of a unit

Sec. 3. (a) The rule of law that any doubt as to the existence of a power of a unit shall be resolved against its existence is abrogated.

(b) Any doubt as to the existence of a power of a unit shall be resolved in favor of its existence. This rule applies even though a statute granting the power has been repealed.

As added by Acts 1980, P.L.211, SEC.1.

IC 36-1-3-4

Rule of law; powers of unit

Sec. 4. (a) The rule of law that a unit has only:

- (1) powers expressly granted by statute;
- (2) powers necessarily or fairly implied in or incident to powers expressly granted; and
- (3) powers indispensable to the declared purposes of the unit;

is abrogated.

(b) A unit has:

- (1) all powers granted it by statute; and
- (2) all other powers necessary or desirable in the conduct of its affairs, even though not granted by statute.

(c) The powers that units have under subsection (b)(1) are listed in various statutes. However, these statutes do not list the powers that units have under subsection (b)(2); therefore, the omission of a power from such a list does not imply that units lack that power.

As added by Acts 1980, P.L.211, SEC.1.

IC 36-1-3-5

Powers of unit; exercise; township exception

Sec. 5. (a) Except as provided in subsection (b), a unit may exercise any power it has to the extent that the power:

- (1) is not expressly denied by the Indiana Constitution or by statute; and
- (2) is not expressly granted to another entity.

(b) A township may not exercise power the township has if

another unit in which all or part of the township is located exercises that same power.

As added by Acts 1980, P.L.211, SEC.1. Amended by P.L.251-1993, SEC.2.

IC 36-1-3-6

Specific manner for exercising a power; constitutional or statutory provision; ordinance; resolution

Sec. 6. (a) If there is a constitutional or statutory provision requiring a specific manner for exercising a power, a unit wanting to exercise the power must do so in that manner.

(b) If there is no constitutional or statutory provision requiring a specific manner for exercising a power, a unit wanting to exercise the power must either:

- (1) if the unit is a county or municipality, adopt an ordinance prescribing a specific manner for exercising the power;
- (2) if the unit is a township, adopt a resolution prescribing a specific manner for exercising the power; or
- (3) comply with a statutory provision permitting a specific manner for exercising the power.

(c) An ordinance under subsection (b)(1) must be adopted as follows:

- (1) In a municipality, by the legislative body of the municipality.
- (2) In a county subject to IC 36-2-2.5, IC 36-2-3.5, or IC 36-3-1, by the legislative body of the county.
- (3) In any other county, by the executive of the county.

(d) A resolution under subsection (b)(2) must be adopted by the legislative body of the township.

As added by Acts 1980, P.L.211, SEC.1. Amended by Acts 1981, P.L.17, SEC.2; P.L.251-1993, SEC.3; P.L.77-2014, SEC.12.

IC 36-1-3-7

Review or regulation of exercise of power by a unit

Sec. 7. State and local agencies may review or regulate the exercise of powers by a unit only to the extent prescribed by statute.

As added by Acts 1980, P.L.211, SEC.1.

IC 36-1-3-8

Powers specifically withheld

Sec. 8. (a) Subject to subsection (b), a unit does not have the following:

- (1) The power to condition or limit its civil liability, except as expressly granted by statute.
- (2) The power to prescribe the law governing civil actions between private persons.
- (3) The power to impose duties on another political subdivision, except as expressly granted by statute.
- (4) The power to impose a tax, except as expressly granted by statute.

(5) The power to impose a license fee greater than that reasonably related to the administrative cost of exercising a regulatory power.

(6) The power to impose a service charge or user fee greater than that reasonably related to reasonable and just rates and charges for services.

(7) The power to regulate conduct that is regulated by a state agency, except as expressly granted by statute.

(8) The power to prescribe a penalty for conduct constituting a crime or infraction under statute.

(9) The power to prescribe a penalty of imprisonment for an ordinance violation.

(10) The power to prescribe a penalty of a fine as follows:

(A) More than ten thousand dollars (\$10,000) for the violation of an ordinance or a regulation concerning air emissions adopted by a county that has received approval to establish an air permit program under IC 13-17-12-6.

(B) For a violation of any other ordinance:

(i) more than two thousand five hundred dollars (\$2,500) for a first violation of the ordinance; and

(ii) except as provided in subsection (c), more than seven thousand five hundred dollars (\$7,500) for a second or subsequent violation of the ordinance.

(11) The power to invest money, except as expressly granted by statute.

(12) The power to order or conduct an election, except as expressly granted by statute.

(b) A township does not have the following, except as expressly granted by statute:

(1) The power to require a license or impose a license fee.

(2) The power to impose a service charge or user fee.

(3) The power to prescribe a penalty.

(c) Subsection (a)(10)(B)(ii) does not apply to the violation of an ordinance that regulates traffic or parking.

As added by Acts 1980, P.L.211, SEC.1. Amended by Acts 1981, P.L.17, SEC.3; P.L.123-1987, SEC.2; P.L.3-1987, SEC.540; P.L.3-1990, SEC.122; P.L.251-1993, SEC.4; P.L.164-1995, SEC.14; P.L.1-1996, SEC.84; P.L.200-2005, SEC.4; P.L.13-2013, SEC.148.

IC 36-1-3-9

Territorial jurisdiction; exception; petition

Sec. 9. (a) The area inside the boundaries of a county comprises its territorial jurisdiction. However, a municipality has exclusive jurisdiction over bridges (subject to IC 8-16-3-1), streets, alleys, sidewalks, watercourses, sewers, drains, and public grounds inside its corporate boundaries, unless a statute provides otherwise.

(b) The area inside the corporate boundaries of a municipality comprises its territorial jurisdiction, except to the extent that a statute expressly authorizes the municipality to exercise a power in areas outside its corporate boundaries.

(c) Whenever a statute authorizes a municipality to exercise a power in areas outside its corporate boundaries, the power may be exercised:

(1) inside the corporate boundaries of another municipality, only if both municipalities, by ordinance, enter into an agreement under IC 36-1-7; or

(2) in a county other than the county in which the municipal hall is located, but not inside the corporate boundaries of another municipality, only if both the municipality and the other county, by ordinance, enter into an agreement under IC 36-1-7.

(d) If the two (2) units involved under subsection (c) cannot reach an agreement, either unit may petition the circuit or superior court of the county to hear and determine the matters at issue. The clerk of the court shall issue notice to the other unit as in other civil actions, and the court shall hold the hearing without a jury. There may be a change of venue from the judge but not from the county. The petitioning unit shall pay the costs of the action.

As added by Acts 1980, P.L.211, SEC.1.